

**Status Report: Programmatic Agreement on WSDOT
Drainage Maintenance and Repair Work**

Transportation Permit Efficiency and Accountability Committee

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Reviewed By TPEAC Programmatic Subcommittee

Why are we here today?

In April 2002, TPEAC approved the programmatic subcommittee report, which identified 9 high priority WSDOT activities to be considered for multi-agency programmatic coverage.

Two of those nine high priority activity types are already covered in the proposed programmatic agreement on Over Water Bridge and Ferry Terminal Maintenance and Preservation Activities. That agreement has been largely agreed upon between WSDOT, Ecology and the Department of Fish and Wildlife. Final programmatic approval for these activities is expected to occur in July 2003.

Four additional activities from the high priority list are now poised for discussion and negotiation for a proposed programmatic agreement to be titled “Drainage Maintenance and Repair Work.” These activities include:

- Ditch and channel maintenance
- Fish Passage maintenance
- Culvert maintenance
- Culvert replacement

The objective of the Programmatic Subcommittee is to reach agreement on common multi-agency conditions and obtain programmatic approval by September 30, 2004.

This briefing paper outlines the steps required to achieve that objective.

What will be the expected coverage of the new agreement and how will it work?

This agreement will take the Programmatic Subcommittee into new territory. The nearly completed programmatic agreement for over water bridge and ferry terminal work is a multi-agency agreement that covers only two regulatory agencies, and both are state agencies (Department of Ecology and Department of Fish and Wildlife).

By contrast, the next proposed agreement will aspire to be a multi-agency agreement that covers not only the two state agencies, but also other jurisdictional agencies including the Corps, Fish and Wildlife Service, NOAA Fisheries and Local Agencies.

What are the relevant local, state and federal agency environmental jurisdictions and responsibilities?

- Department of Fish and Wildlife has jurisdiction over activities that occur in waters of the State (WAC 220-110).
- Ecology regulates section 401 of the Clean Water Act and state surface water quality standards (RCW 90.48).
- The Corps regulates section 404 of the Clean Water Act, which permits the placement fill in waters of the US.
- US Fish and Wildlife Service regulates section 7 and 9 of the Endangered Species Act, which protects listed species including bull trout. Section 7 requires federally funded activities to consult with the Agency in cases where the activity could have an effect on listed species.
- NOAA Fisheries regulates section 7 and 9 of the Endangered Species Act, which protects listed fish species.
- Local Agencies regulate the Shoreline Management Act and Critical Areas Ordinances

What are the current regulatory procedures and issues?

- Department of Fish and Wildlife currently issues individual HPA permits for these activity types. One issue regarding the current process includes difficulty in receiving HPA permits for culvert maintenance at locations that are chronic or frequent.
- The current Water Quality Implementing Agreement with Ecology covers most of these activities. The main threshold for compliance is the ability to meet standard turbidity mixing zone for in water work. In some cases, culvert maintenance or replacement may exceed these standards and require individual approval from Ecology.
- The Corps typically issues Nationwide Permit #3 for maintenance and repair activities of this nature. The Nationwide permit is not a programmatic permit approval, as it requires the applicant to apply for and receive individual permit approval. Recently, the Corps has negotiated programmatic agreement under the Endangered Species Act to allow culvert replacement in cases where they pose barriers to fish migration, so there is currently some standard in place for certain cases of culvert replacement.
- USFWS requires review and approval of these activities where there is a potential to effect listed species. Current programmatic approvals under development that include coverage for these activities include a programmatic BA for western Washington and one for eastern Washington. These programmatic documents have been under development for over 2 years with no anticipated date for completion. The WSDOT 4d Maintenance manual also provides programmatic coverage under

Section 9 of the Endangered Species Act, however, WSDOT is currently strategizing the method of approval for USFWS.

- NOAA Fisheries requires review and approval of these activities where there is a potential to effect listed aquatic species. Current programmatic approval in place that covers these activities includes the WSDOT statewide aquatic programmatic BA. The 4d Maintenance Manual is currently in the process of review and approval.
- Local Agencies typically requires review and approval for these activities in cases where they occur in shoreline jurisdiction under the Shoreline Management Act and within sensitive areas under the jurisdiction of Critical Area Ordinances. There are no programmatic processes in place with these agencies. The primary issue with the current process is the added time and cost associated with applying for and negotiating exemption or individual permits with local agencies.

What is envisioned for a new programmatic agreement?

The goal for the new programmatic agreement would be the development of Unified Conditions for the four drainage maintenance and repair type activities that are agreed upon by all permit agencies with jurisdiction. The Unified Conditions would lead to programmatic permit approval with each agency.

- Department of Fish and Wildlife could issue statewide 5 year General HPA for these activities. The threshold for allowing culvert replacement under a general HPA would likely be very restrictive.
- Ecology and WSDOT could continue programmatic coverage for these projects under the Water Quality Implementing Agreement.
- The Corps could issue a Regional General Permit that would cover these projects. This would provide a more streamlined process than the current nationwide permit process.
- The development of Unified Conditions for these activities should consider the conditions being negotiating in the programmatic efforts under way with Fish and Wildlife Service, which include the eastern and western Washington programmatic BA and the WSDOT 4d Maintenance Manual. Effort should be made to finalize these programmatic documents.
- The development of Unified Conditions for these activities should consider conditions in the current approved aquatic programmatic BA with NOAA Fisheries.
- It would be beneficial to have a process for Local Agencies to buy-in to the Unified Conditions for these activities.

How will negotiation of the agreement be approached?

The Programmatic Implementing Group met for the first time to discuss these activities in April 2003. We are currently in the process of developing a work plan for completing this agreement by September 2003.

The greatest uncertainty in the proposed work to achieve this permit is the willingness of federal and local agencies to commit to the process and devote staff and technical resources to the effort.

Nest steps

The Programmatic Implementing Group will report back to TPEAC in July regarding the status of this process.

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